

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: KEURIG GREEN MOUNTAIN SINGLE- : No. 1:14-md-02542 (VSB)
SERVE COFFEE ANTITRUST LITIGATION :
: *Applies to:*
: No. 14 Civ. 4242
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**DECLARATION OF ELAINE EWING IN SUPPORT OF KEURIG GREEN
MOUNTAIN'S OPPOSITION TO JBR'S MOTION FOR A PRELIMINARY
INJUNCTION**

1. I am an attorney at the law firm of Cleary Gottlieb Steen & Hamilton LLP, counsel for Defendant Keurig Green Mountain, Inc., f/k/a Green Mountain Coffee Roasters, Inc., and successor to Keurig, Incorporated (“Keurig Green Mountain”). I have personal knowledge of the following and, if called upon to testify, could and would do so competently as to the accuracy of the matters stated herein. I submit this declaration in support of Keurig Green Mountain’s Opposition to the Motion for a Preliminary Injunction filed by JBR, Inc. (d/b/a Rogers Family Company) (“JBR”).
2. Attached hereto as Exhibit 1 is a true and correct copy of Green Mountain Coffee, Inc.’s Annual Report (Form 10-K), dated December 18, 1998.
3. Attached hereto as Exhibit 2 is a true and correct copy of “Keurig Vue Technology,” *available at www.keurig.com*.
4. Attached hereto as Exhibit 3 is a true and correct copy of the transcript from TreeHouse Foods Inc.’s Q2 2014 Earnings Call, prepared by Bloomberg and dated August 7, 2014.
5. Attached hereto as Exhibit 4 is a true and correct copy of a spreadsheet entitled “Summary of Sales in pounds & dollars; Year ended March 31, 2014,” produced by JBR with Bates label JBRI00000180, and designated Highly Confidential.
6. Attached hereto as Exhibit 5 is a true and correct copy of JBR, Inc.’s Consolidated Financial Statements as of and for the Year Ended March 31, 2014, produced by JBR with Bates label JBRI00000001, and designated Highly Confidential.
7. Attached hereto as Exhibit 6 is a true and correct copy of a spreadsheet entitled “JBR Inc. Domestic Operations Year Ending March 31, 2014,” produced by JBR with Bates label

JBRI00000036, and designated Highly Confidential.

8. Attached hereto as Exhibit 7 is a true and correct copy of a presentation entitled “Green Mountain Coffee Roasters, Inc. Investor Day September 10, 2013,” *available at* <http://investor.keuriggreenmountain.com/investorday.cfm>.
9. Attached hereto as Exhibit 8 is a true and correct copy of a document entitled “Messaging for Keurig® Vue® Exit,” produced by Keurig Green Mountain with Bates label KGM00000086, and designated Highly Confidential. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.
10. Attached hereto as Exhibit 9 is a true and correct copy of the Edited Transcript of Keurig Green Mountain Inc.’s Q3 2014 Earnings Call, prepared by Thomson Reuters and dated August 6, 2014.
11. Attached hereto as Exhibit 10 is a true and correct copy of an article entitled “GMCR’s Keurig Vue Wins 2013 Gold Edison Awards,” from Vending Market Watch, dated April 26, 2013.
12. Attached hereto as Exhibit 11 is a true and correct copy of “Keurig Vue Single-Serve Coffeemaker,” *available at* goodhousekeeping.com.
13. Attached hereto as Exhibit 12 is a true and correct copy of “Review: Keurig VUE V700 Single Cup Brewing System Makes Amazing Coffee, Tea, and Café Style Drinks,” *available at* www.singleservecoffee.com/archives/039699.php, dated March 7, 2012.

14. Attached hereto as Exhibit 13 is a true and correct copy of the Rule 30(b)(6) deposition transcript of David Manly, dated August 8, 2014 and designated Highly Confidential.
15. Attached hereto as Exhibit 14 is a true and correct copy of the Rule 30(b)(6) deposition transcript of Michael Sarina, dated August 26, 2014 and designated Highly Confidential.
16. Attached hereto as Exhibit 15 is a true and correct copy of the Rule 30(b)(6) deposition transcript of Kevin Sullivan, dated August 7, 2014 and designated Highly Confidential.
17. Attached hereto as Exhibit 16 is a true and correct copy of the Rule 30(b)(6) deposition transcript of Kevin Sullivan, dated August 22, 2014 and designated Highly Confidential.
18. Attached hereto as Exhibit 17 is a true and correct copy of an article entitled “New Coffee Brewer Tests Keurig CEO’s Recipe,” from The Wall Street Journal, dated August 21, 2014.
19. Attached hereto as Exhibit 18 is a true and correct copy of the Rule 30(b)(6) deposition transcript of David Manly, dated August 22, 2014 and designated Highly Confidential.
20. Attached hereto as Exhibit 19 is a true and correct copy of an article entitled “Keurig vs Nespresso: The Battle for Single-Cup Coffee Supremacy,” from The Motley Fool, dated April 7, 2014.
21. Attached hereto as Exhibit 20 is a true and correct copy of a document entitled “Updated Thoughts on Keurig 2.0 and F1Q14,” from Stifel, dated January 30, 2014.
22. Attached hereto as Exhibit 21 is a true and correct copy of a document entitled “First Look at New Keurig 2.0,” from SunTrust Robinson Humphrey, dated March 17, 2014.

23. Attached hereto as Exhibit 22 is a true and correct copy of a presentation entitled “Keurig® 2.0 - Consumer Solution or Retailer Problem?,” dated June 17, 2014, produced by JBR with Bates label JBRI00000179, and designated Highly Confidential.
24. Attached hereto as Exhibit 23 is a true and correct copy of an article entitled “Keurig Looks To Clarify Interactive Technology On New 2.0 Brewer System,” from Gourmet Insider, and dated March 12, 2014.
25. Attached hereto as Exhibit 24 is a true and correct copy of a press release from Green Mountain Coffee Roasters, Inc., entitled “Green Mountain Coffee Roasters, Inc.’s First Quarter Fiscal 2013 Revenue Grows 16% Over Prior Year with Free Cash Flow of \$254 Million,” dated February 6, 2013.
26. Attached hereto as Exhibit 25 is a true and correct copy of a Green Mountain Coffee Roasters, Inc. press release entitled “Green Mountain Coffee Roasters Reports Second Quarter Fiscal 2013 GAAP EPS of \$0.87 and Non-GAAP EPS of \$0.93 Representing Growth of 50% and 45% Respectively Over the Prior Year Period,” dated May 8, 2013.
27. Attached hereto as Exhibit 26 is a true and correct copy of a Green Mountain Coffee Roasters, Inc. press release entitled “Green Mountain Coffee Roasters Reports Third Quarter Fiscal Year 2013 Results,” dated August 7, 2013.
28. Attached hereto as Exhibit 27 is a true and correct copy of a Green Mountain Coffee Roasters, Inc. press release entitled “Green Mountain Coffee Roasters Reports Full Fiscal Year and Fourth Quarter Fiscal 2013 Results,” dated November 20, 2013.
29. Attached hereto as Exhibit 28 is a true and correct copy of a Keurig.com web page

entitled “All Keurig® 2.0 Brewing Systems,” *available at*
<http://www.keurig.com/shop/keurig2-0-brewers/keurig2-0-all-brewers>.

30. Attached hereto as Exhibit 29 is a true and correct copy of a Keurig web page entitled “Keurig® K10 MINI Plus Brewing System,” *available at* www.keurig.com.
31. Attached hereto as Exhibit 30 is a true and correct copy of an article entitled “Review: Keurig VUE V700 Single Cup Brewing System Makes Amazing Coffee, Tea, and Café Style Drinks,” *available at* www.singleservecoffee.com/archives/039699.php, dated March 7, 2012.
32. Attached hereto as Exhibit 31 is a true and correct copy of the Edited Transcript of TreeHouse Foods, Inc. at Citi Global Consumer Conference, prepared by Thomson Reuters and dated May 28, 2014.
33. Attached hereto as Exhibit 32 is a true and correct copy of a presentation entitled “2.0 Readiness Review,” produced by Keurig Green Mountain with Bates label KGM00000001, and designated Highly Confidential. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.
34. Attached hereto as Exhibit 33 is a true and correct copy of an article entitled “RealCup™ Brand Capsules Compatible with Keurig® 2.0 Brewers,” from Yahoo Finance, dated August 21, 2014.
35. Attached hereto as Exhibit 34 is a true and correct copy of the transcript from TreeHouse

Foods Inc.'s Q2 2014 Earnings Call, prepared by Bloomberg and dated August 7, 2014.

36. Attached hereto as Exhibit 35 is a true and correct copy of a letter from Aldo A. Badini to Lev L. Dassin, dated August 19, 2014.

37. Attached hereto as Exhibit 36 is a true and correct copy of a presentation entitled "Keurig® 2.0 – Consumer Solution or Consumer Problem?," dated July 22, 2014, produced by JBR with Bates label JBRI00000187, and designated Highly Confidential.

38. Attached hereto as Exhibit 37 is a true and correct copy of an article entitled "Boyd's Coffee launches single-serve coffees for retail, foodservice," from Beverage Industry, dated April 22, 2014.

39. Attached hereto as Exhibit 38 is a true and correct copy of an article entitled "Jumping Bean to offer single cuppas at home," from The Telegram, dated July 15, 2014.

40. Attached hereto as Exhibit 39 is a true and correct copy of an article entitled "Coffee Blenders," from Beverage Industry, dated May 16, 2014.

41. Attached hereto as Exhibit 40 is a true and correct copy of an article entitled "White Castle releases single-cup coffees," from Beverage Industry, dated April 21, 2014.

42. Attached hereto as Exhibit 41 is a true and correct copy of an article entitled "Joltin' Joe coffee," from Beverage Industry, dated February 6, 2014.

43. Attached hereto as Exhibit 42 is a true and correct copy of an article entitled "Melitta Café de Europa Single Serve Gourmet Coffee," from Beverage Industry, dated January 2, 2014.

44. Attached hereto as Exhibit 43 is a true and correct copy of a TreeHouse Foods, Inc. press release entitled “TreeHouse Foods, Inc. Reports Second Quarter 2014 Results,” dated August 7, 2014.
45. Attached hereto as Exhibit 44 is a true and correct copy of a spreadsheet entitled “Consolidated Summary of Debt,” dated May 20, 2014, produced by JBR with Bates label JBRI00000185, and designated Highly Confidential.
46. Attached hereto as Exhibit 45 is a true and correct copy of an undated spreadsheet entitled “FY14 OneCup Sales by channel,” produced by JBR with Bates label JBRI00000039, and designated Highly Confidential.
47. Attached hereto as Exhibit 46 is a true and correct copy of an undated spreadsheet entitled “FY12 Top 25 OneCup Customers,” produced by JBR with Bates label JBRI00000076, and designated Highly Confidential.
48. Attached hereto as Exhibit 47 is a true and correct copy of an undated spreadsheet entitled “FY13 Top 25 OneCup Customers,” produced by JBR with Bates label JBRI00000077, and designated Highly Confidential.
49. Attached hereto as Exhibit 48 is a true and correct copy of an undated spreadsheet entitled “FY14 Top 25 OneCup Customers,” produced by JBR with Bates label JBRI00000146, and designated Highly Confidential.
50. Attached hereto as Exhibit 49 is a true and correct copy of a spreadsheet entitled “FY15 (as of 7/31/14) Top 25 OneCup Customers,” dated July 31, 2014, produced by JBR with Bates label JBRI00000178, and designated Highly Confidential.

51. Attached hereto as Exhibit 50 is a true and correct copy of a document entitled “Keurig® K-cup® K40/K45 Elite Brewer Owner's Manual,” *available at* www.keurig.com.

52. Attached hereto as Exhibit 51 is a true and correct copy of an undated presentation entitled “Fall 2014 Innovation,” produced by Keurig Green Mountain with Bates label KGM00006220, and designated Highly Confidential. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

53. Attached hereto as Exhibit 52 is a true and correct copy of a presentation entitled “ELT Review 2.0 Launch,” dated August 18, 2014, provided by Keurig Green Mountain, and hereby designated Highly Confidential. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

54. Attached hereto as Exhibit 53 is a true and correct copy of a presentation entitled “Keurig® 2.0,” dated June 9, 2014, produced by JBR with Bates label JBRI00000186, and designated Highly Confidential.

55. Attached hereto as Exhibit 54 is a true and correct copy of an undated document entitled “Say Hello to Keurig 2.0,” produced by Keurig Green Mountain with Bates label KGM00000072. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information

transmitted by – someone with knowledge.

56. Attached hereto as Exhibit 55 is a true and correct copy of an article entitled “Green Mountain Names Coca-Cola’s Brian Kelley as CEO,” *available at* <http://www.bloomberg.com/news/2012-11-20/green-mountain-coffee-appoints-coca-cola-s-brian-kelly-as-ceo.html>.

57. Attached hereto as Exhibit 56 is a true and correct copy of a document entitled “2014 CAGNY Conference,” dated February 19, 2014, *available at* http://files.shareholder.com/downloads/GMCR/3130611441x0x727003/0da0aab3-8571-4c6d-acfc-b5dcb34ad3fc/CAGNY%202014_for%20Web.pdf.

58. Attached hereto as Exhibit 57 is a true and correct copy of “Tassimo: Safety Recall,” *available at* <http://www.tassimodirect.com/Safety-Recall/cs-safety-recall,default,pg.html>.

59. Attached hereto as Exhibit 58 is a true and correct copy of an undated document entitled “Product Specification, K501,” produced by Keurig Green Mountain with Bates label KGM00000528, and designated Highly Confidential. This document was provided by Keurig Green Mountain and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

60. Attached hereto as Exhibit 59 is a true and correct copy of “Keurig 2.0 K460 Brewing System with 42 K-Cup Packs & 4 K-Carafe Packs,” *available at* <http://www.samsclub.com/sams/keurig-2-0-k460-brewer/prod14630026.ip>.

61. Attached hereto as Exhibit 60 is a true and correct copy of “Keurig 2.0 Single Cup Coffee

Brewing System K560 with K-Carafe,” *available at*

<http://www.costco.com/Keurig%C2%AE-2.0-Single-Cup-Coffee-Brewing-System-K560-with-K-Carafe%E2%84%A2.product.100129587.html>.

62. Attached hereto as Exhibit 61 is a true and correct copy of “Where to Buy Our Coffee,” *available at* <http://www.rogersfamilyco.com/index.php/where-to-buy-our-coffee>.

63. Attached hereto as Exhibit 62 is a true and correct copy of an undated Royal Cup Coffee’s Single Serve Solutions distributor catalogue. This document is a true and correct copy received from the Office Manager of Cleary Gottlieb Steen & Hamilton LLP in Washington, D.C.

64. Attached hereto as Exhibit 63 is a true and correct copy of a Green Mountain Coffee Roasters, Inc. press release entitled “Green Mountain Coffee Roasters, Inc. Partners with Costco to Create Kirkland Signature K-Cup Packs for Keurig Single Cup Brewers,” dated November 1, 2012, *available at* http://files.shareholder.com/downloads/GMCR/0x0x610563/b704e4d3-9168-4b60-b97ad85f3fe0defd/GMCR_News_2012_11_1_Specialty_Coffee_Releases.pdf.

65. Attached hereto as Exhibit 64 is a true and correct copy of a letter to Jennifer Fox, Fox Vending, from David Smagala, Green Mountain Coffee Roasters, Inc., dated October 10, 2013. This document is hereby designated as Highly Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

66. Attached hereto as Exhibit 65 is a true and correct copy of an executed agreement entitled “Non-Exclusive Distributorship Agreement,” dated October 1, 2010. This document is hereby designated as Highly Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

67. Attached hereto as Exhibit 66 is a true and correct copy of a letter to Jennifer Fox, Fox Vending, from David Smagala, Green Mountain Coffee Roasters, Inc., dated September 3, 2013. This document is hereby designated as Highly Confidential under the June 6, 2014 Protective Order. This document was provided to me by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

68. Attached hereto as Exhibit 67 is a true and correct copy of a letter to Andrew Gross from Greg Campbell, Green Mountain Coffee Roasters, Inc., dated January 30, 2014. This document is hereby designated as Highly Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

69. Attached hereto as Exhibit 68 is a true and correct copy of an executed agreement, titled

“Confidentiality and Inventions Assignment Agreement,” dated August 27, 2011. This document is hereby designated as Highly Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

70. Attached hereto as Exhibit 69 is a true and correct copy of a letter to David Fuller, Coffee Pause Co. Agawam from David Smagala, Green Mountain Coffee Roasters, Inc., dated October 10, 2013. This document is hereby designated as Highly Confidential under the June 6, 2014 Protective Order. This document was provided to me by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

71. Attached hereto as Exhibit 70 is a true and correct copy of a letter to David Fuller, Coffee Pause Co. Agawam, to David Smagala, Green Mountain Coffee Roasters, Inc., dated September 3, 2013. This document is hereby designated as Highly Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

72. Attached hereto as Exhibit 71 is a compilation of true and correct copies of press releases from unlicensed portion pack manufacturers.

73. Attached hereto as Exhibit 72 is a compilation of true and correct copies of customer reviews from Macy's website, *available at* <http://www.macys.com>.

74. Attached hereto as Exhibit 73 is a compilation of true and correct copies of customer reviews from Amazon's website, *available at* <http://www.amazon.com>.

75. Attached hereto as Exhibit 74 is a true and correct copy of a document entitled "Wakefern Top to Top/Innovation Meeting," dated February 17, 2014, produced by Keurig Green Mountain with Bates label KGM00006225, and designated Highly Confidential. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

76. Attached hereto as Exhibit 75 is a true and correct copy of an undated document titled "Non-Exclusive Distributorship Agreement." This document is hereby designated as Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

77. Attached hereto as Exhibit 76 is a true and correct copy of an undated document entitled "Non-Exclusive Distributorship Agreement 'KAD Agreement.'" This document is hereby designated as Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of

business at or near the time by – or from information transmitted by – someone with knowledge.

78. Attached hereto as Exhibit 77 is a true and correct copy of an undated document entitled “Non-Exclusive Distributorship Agreement.” This document is hereby designated as Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

79. Attached hereto as Exhibit 78 is a compilation of true and correct copies of customer reviews from Amazon’s website, *available at* <http://www.amazon.com>.

80. Attached hereto as Exhibit 79 is a true and correct copy of an undated document entitled “Vue UI Map V2.” This document is hereby designated as Confidential under the June 6, 2014 Protective Order. This document was provided by Keurig Green Mountain, and I understand that it is a business record prepared and maintained by Keurig Green Mountain in the ordinary course of business at or near the time by – or from information transmitted by – someone with knowledge.

81. Attached hereto as Exhibit 80 is a true and correct copy of the LinkedIn profile of Andrew Gross, *available at* <http://www.linkedin.com/pub/andrew-gross/10/252/8b2>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: August 29, 2014



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*Attorney for Keurig Green Mountain, Inc., f/k/a Green Mountain
Coffee Roasters, Inc., and as successor to Keurig, Incorporated.*